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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942. No. 748

Estate of
GEORGE W. ZOELL,
Deceased.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

HELEN M. GITHENS,
Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942. No. .

Estate of

GEORGE W. ZOELL,

Deceased.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Helen M. Githens respectfully represents:

I.

Statement of matter involved.

The petitioner, Helen M. Githens, is a niece of decedent, George W. Zoell, who died intestate on May 25, 1941, being a resident of and domiciled in Pittsburgh, Allegheny County, Pennsylvania.

Petitioner claims one-half of $38,711.60, being the residue of personalty in the estate.

The parties with adverse interest are Edgar L. Kress and F. A. Goedecke, Administrators of the Estate of the said decedent, and the said Edgar L. Kress, individually; the latter being sometimes herein referred to as the adverse claimant.

Petitioner is a niece of decedent. She is a daughter of Mary J. Campbell, a sister of decedent, who died in 1918; and she was known as Helen Campbell until August 8, 1919 when Caleb B. Githens and Gracie Githens, his wife, residing in Atco, New Jersey, adopted her by decree of the Orphans' Court in the County of Camden, State of New Jersey. In the adoption proceedings, Harry Reeves, Esq., as next friend of petitioner herein who was then a minor, 12 years of age, gave written consent to the adoption, after which petitioner resided and still resides in Atco, New Jersey. The decree of adoption recited "that the rights, duties, privileges and relations heretofore existing between the said Helen Campbell and her parents, lately deceased, shall be and are in all respects at an end, excepting the right of inheritance".

Decedent left him surviving four kin, namely: (1) Helen M. Githens, Petitioner; (2) Edgar L. Kress, a grand-nephew; (3) Martha M. Packer, a grand-niece, a sister of Kress; (4) Donald W. Biggs, a grand-nephew, brother of Kress. The last two conceded that they were barred from inheritance by adoption decrees duly entered in Pennsylvania Courts.

At the audit of the Administrators' Account in the Orphans' Court of Allegheny County, petitioner presented her claim to one-half of the residue; her claim was disallowed because of her adoption; the entire residue was awarded to Edgar L. Kress, the adverse claimant, and a decree of distribution was entered accordingly. Petitioner filed exceptions which were dismissed, then appealed to the Supreme Court of Pennsylvania, the highest Court of the Commonwealth in which a decision could be had, which, on November 23, 1942, affirmed the decree of distribution.

II.

Basis of jurisdiction.

The jurisdiction of this Court is invoked (1) under Article IV, Section 1 of the Constitution of the United

States, which directs that "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"; and (2) under R. S. § 905, providing that authenticated records and judicial proceedings "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken", (May 26, 1790 c. 11, 1 Stat. 122; Mar. 27, 1804, c. 56 (§ 2, 2 Stat. 299) and (3) under Section 237 of the Judicial Code as amended, (R. S. §§ 690, 709; Mar. 3, 1911, c. 231 §§ 236, 237, 36 Stat. 1156; Dec. 23, 1914, c. 2, 38 Stat. 790; Sept. 6, 1916, c. 448 § 2, 39 Stat. 726; Feb. 17, 1922, c. 54, 42 Stat. 366; Feb. 13, 1925, c. 229 § 1, 43 Stat. 937; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54.)

The decree to be reviewed is the decree of the Supreme Court of Pennsylvania entered on November 23, 1942, affirming the decree of distribution of the Orphans' Court of Allegheny County entered on March 12, 1942.

III.

Questions presented.

1. Under the "full faith and credit" clause of the Constitution of the United States, does adoption of a child by decree entered in New Jersey bar inheritance of personal estate from a natural uncle who died intestate, domiciled in Pennsylvania, the decree having expressly reserved the right of inheritance?

2. Under the "full faith and credit" clause of the Constitution of the United States, does Section 16(b) of the Pennsylvania Intestate Act of 1917, P. L. 429, which bars inheritance by adopted persons from natural relatives apply to a decree of adoption entered in another state, if the decree expressly reserves the right of inheritance?

IV.

Specification of errors.

The Supreme Court of Pennsylvania, in affirming the decree of distribution entered by the Orphans' Court of Allegheny County, answered the questions presented (supra p. 3) in the affirmative; and petitioner intends to urge that said Court erred therein.

V.

Opinions below.

The opinion filed by the Orphans' Court of Allegheny County has not been officially reported, but a copy thereof will be found in the record (R. 8a).

The opinion filed by the Supreme Court of Pennsylvania has been officially reported in 345 Pa. 413; and a copy thereof will be found in the record (R. 6b).

VI.

Reasons relied upon for allowance of the writ.

It is submitted that the decision of the Supreme Court of Pennsylvania contravenes Article IV, Section 1 of the Constitution of the United States, in a matter of substance not heretofore determined by this Court, or probably not in accord with applicable decisions of this Court, and therefore a review on writ of certiorari should be granted.

The Constitution of the United States.

Article IV, Section 1, directs that "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State".

Revised Statutes § 905.

". . . And the said records and judicial proceedings . . . shall have such faith and credit given to them in

every court within the United States as they have by law or usage in the courts of the State from which they are taken."

The Pennsylvania Intestate Act.

Section 16(b) of the Act of June 7, 1917, P. L. 429; 20 P. S. Section 102, provides "Adopted persons shall not be entitled to inherit or take from or through their natural parents, grand parents or collateral relatives, but each adopted person shall have all his or her rights under this Act in the estates of his or her spouse, children and descendants."

General Principles.

In *American Jurisprudence,* Volume 1, p. 654, et seq., reference is made to the right of inheritance after adoption. In Section 55 p. 654, with regard to inheritance from or through the child, it is said that adoption statutes are not to be read as completely defining the incidents of the relationship between the adopted child and its kindred by adoption, but merely as establishing a status, the incidents of which are the same as those of a natural relationship; and in Section 57, page 656, with regard to inheritance from or through natural parents, it is said that consanguinity is so fundamental in statutes of descent and distribution that it may only be ignored by construction when Courts are forced so to do, either by the express terms of the statute or by inexorable implication; that an adopted child is, in a legal sense, the child both of its natural and its adopting parents, and is not, because of the adoption, deprived of its right of inheritance from its natural parents, unless the statute expressly so provides.

In *Slattery v. Hartford-Connecticut Trust Co.,* 115 Conn. 163, 161 Atl. 79, a child was adopted in Michigan, where an adopted child could inherit from his natural parents as well as from his adoptive parents. Although Connecticut refused such "double inheritance" to its own

adopted persons, the Connecticut court held, nevertheless, that a child adopted in Michigan could inherit from its natural parents residing in Connecticut. The court said, at page 166:

> "It has seemed wise to our Legislature to debar a child adopted under our statutes from the right of inheritance from his natural parents, and it has to this extent established our public policy. But it has not attempted to lay down any rule applicable in the case of children coming here from another state where they have been adopted under laws which do not take away that right."

Decisions of the Pennsylvania Courts.

The Orphans' Court of Allegheny County, in the Opinion (R. 8a) held that the Intestate Act of Pennsylvania deprives adopted persons of the right of inheritance from their natural relatives; and that the full faith and credit clause of the Constitution of the United States cannot be invoked in favor of inheritance rights reserved by a decree of Court in the State of adoption where such rights are denied by statute in the state of decedent's domicile.

The Supreme Court of Pennsylvania in the Opinion (R. 6b, reported at 345 Pa. 413) held that petitioner was not enabled by the reservation of her inheritance rights in the decree of adoption to claim a one-half share in the estate of her natural uncle; that the state would recognize her status as an adopted child of her foster parents, but under the Intestate Act she, like all other adopted children, cannot take anything from a natural collateral relative; that the New Jersey decree or the statute of that state to which the decree gives effect cannot alter the positive law of Pennsylvania; and that the full faith and credit clause of the Constitution of the United States requires only that her status as adopted be recognized. The highest court of Pennsylvania reasoned from principles announced in cases

in which adopted persons claimed the right to inherit, and it was held that the status of adoption should be recognized but the right of inheritance should be denied, because under the laws of the state where the property was found, adopted persons do not take; also from principles announced in cases in which the right of inheritance through natural relatives was preserved by statute and not by decree. In the case at bar, petitioner does not claim the right to inherit by virtue of adoption; to the contrary, the adverse claimant would disinherit petitioner, giving full faith and credit to that part of the decree in which the status of an adopted child is created, yet refusing full faith and credit to another part of the same decree in which the right of inheritance is reserved.

The Supreme Court of Pennsylvania cited *Crossley's Estate,* 135 Pa. Superior Court 524, 7 A, 2d 539, 73 A. L. R. 974, in which the status of adoption was recognized, but, there being *no reservation in the decree,* the Court held that the statute of Ohio did not preserve the right of inheritance. However, in Crossley's Estate, the Superior Court in its opinion, at page 526, distinguished *Hall's Estate,* 20 District and County Reports (Pa.) 214, saying that in the adoption proceeding then under consideration, "no right to inherit from or through the natural parents was reserved, as in Hall's Estate, 20 D. & C. 214."

In *Hall's Estate,* supra, the adjudication was written by Judge Gest, a learned jurist, who headed the commission appointed to codify the Pennsylvania law of decedents' estates including the Intestate Act from which Section 16(b) is quoted, supra p. 5. In that case a child was adopted in accordance with the same New Jersey Statute here involved, and the decree of adoption provided that the rights, duties, privileges and relations existing between the minor child and his parents shall be in all respects at an end, "excepting the right of inheritance", and the decedent died intestate, domiciled in Pennsylvania. The Court held that his personal estate should

be distributed between his natural children, including the son who had been adopted by others in New Jersey. Judge Gest reviewed the authorities, many of which were cited in the case at bar, and reached the following conclusions, viz:

(a) Under the Intestate Act of Pennsylvania the adopted child would be entitled to share in his natural father's estate unless it be clearly shown that his rights have been divested;

(b) The decree of adoption in New Jersey which is relied upon to show that his rights were so divested, reserved in clear terms his right to inherit from his natural father;

(c) The adoption proceedings in New Jersey were contractual in their nature and reserved in behalf of the infant child the latter's right to inherit from his natural father.

The opinion of the Supreme Court of Pennsylvania (R. 8b) points to the incongruity which would result if two sons of deceased parents were adopted, one in Pennsylvania, and the other in New Jersey; the child adopted in Pennsylvania could claim nothing from the estate of a natural collateral who died while domiciled in Pennsylvania, whereas the child adopted in New Jersey might claim and receive all. But, there is now a real incongruity in the case at bar, viz: that petitioner when a minor child, according to the record of the adoption proceedings, had an estate of her own and by her next friend consented to the adoption decree, contractual in its nature, thereby reserving the right of inheritance between her natural parents and herself; that she is deprived of her inheritance from her Pennsylvania relatives, whereas, in the event of her death intestate, the same relatives could claim her estate under the laws of New Jersey.

The effect of such reasoning is to permit the Courts of Pennsylvania not only to deny full faith and credit to the decree of a sister State, but also to impose upon New Jersey its laws and policies against next of kin who have been adopted in that State.

Decisions of the Supreme Court of the United States.

The most recent case in which this Court has considered the effect of Article IV, Section 1 of the Constitution, is *Williams v. North Carolina*, decided December 21, 1942, 87 Supreme Court Law. Ed. 190; and reference is made therein to the decision in *Davis v. Davis*, 305 U. S. 32, 40, 83 Law. Ed. 26, 29, 59 Supreme Court 3, where the Court held that the constitutional provision requires that "not some, but full" faith and credit be given judgments of a state court.

The decree involved in this case is a judgment of a Court of the State of New Jersey. Petitioner is the natural niece of the decedent and related to him in the same degree of consanguinity as the mother of the adverse claimant through whom the latter claims, so that were it not for the decree of adoption entered in Camden County on August 8, 1919, petitioner would share equally with the latter in the residue of the estate. The adverse claimant relies upon the adoption, an exemplified copy of the proceedings and decree therein having been offered in evidence. (Adoption decree, R. 4a.)

Did the Pennsylvania Courts give full faith and credit to the New Jersey decree? It was incumbent upon the Pennsylvania Courts to give "not some, but full" faith and credit to the decree, which it is urged, means full faith and credit *not to part, but to all,* of the decree. Petitioner does not rely upon the decree to support her right, nor does she seek by the decree to acquire any right of inheritance; but to the contrary, it is the adverse claimant who contends that she should be deprived of her inheritance by reason of the decree; wherefore it would seem that both

on reason and logic, the adverse claimant should not be permitted to strike out part of the decree and to obliterate therefrom the words "excepting the right of inheritance" by which the New Jersey Court limited its effect.

It is not infrequent in equity proceedings that the Courts enter decrees which are limited or restricted, or the effect of which is postponed. In divorce proceedings, in some states, it is customary to enter interlocutory decrees which do not become final for some time; or decrees which include property settlements and custody of children. If the parties seek to create or destroy property rights based upon such decrees, surely it would be incumbent upon the Courts to take cognizance of the decrees in full and not in part. In adoption proceedings, in some states, it is customary to enter decrees which, as in the case at bar, include a reservation of rights of inheritance; in other states (as in Pennsylvania), it is customary to enter decrees which create a right of inheritance through the adoptive parents and bar any future right of inheritance through the natural parents and collateral relatives. When an adopted person offers a decree *in support of a claim of inheritance,* there is authority for the rule that the Courts of one state must give effect to the status created by the decree but need not give effect to the inheritance claimed under it. However, when a decree of adoption is offered *to disinherit* the person affected thereby, there is no authority for the decision that the decree shall be effective but only insofar as it determines the status and destroys the inheritance, and that words and phrases in the decree which limit its effect to reserve the right of inheritance shall be ignored.

In the case at bar, this Court is not requested to consider the effect of the adoption *statute* of New Jersey and the full faith and credit to be accorded by the Courts of Pennsylvania; but rather is this Court requested to consider the *decree* of adoption entered by a Court of competent jurisdiction in New Jersey. There is a substantial

difference, because statutes can be altered, amended or repealed, but a judgment or decree unappealed from becomes final and is not subject to any change.

The decisions of this Court relating to the extra-territorial effect of a decree insofar as it affects property in another state have not determined the issue here involved.

In *Clarke v. Clarke*, 178 U. S. 186, 190, the error assigned was that the Courts of Connecticut refused full faith and credit to the decree of the Courts of South Carolina wherein the latter adjudged that the will of decedent had the effect of converting her real estate wherever situate into personalty; but it was held that though personal property might be controlled by the law of South Carolina, which was decedent's domicile, real estate within Connecticut was controlled by the law of Connecticut.

Petitioner concedes that the Pennsylvania law should determine which kin should take, and their shares in distribution; but urges that whether petitioner has been adopted and with what limitations should be determined by the law of the state in which the decree was entered, and the decree itself is entitled to full faith and credit.

In *Fall v. Eastin*, 215 U. S. 1; 54 Law. Ed. 65; 30 Supreme Court 3: a husband and wife, while living in Nebraska, acquired real estate jointly and by the same conveyance; they moved to Washington where a decree of divorce was entered in favor of the wife, setting apart to her the specific real estate acquired in Nebraska and directing the husband to convey all of his right, title and interest therein to her; the Nebraska Courts refused to set aside a subsequent conveyance which the husband made to defeat the decree, and in fraud of the rights of the wife. This Court held that the full faith and credit clause in the Constitution does not extend the jurisdiction of the Courts of one State to property situate in another, but only makes the judgment rendered conclusive on the merits of the claim or subject matter of the suit; that to give it the force of a judgment in another State, it must become a judgment

there; and furthermore that a decree of conveyance is not of itself legal title nor does it transfer the legal title. The effect of the decision is merely that judgments or decrees entered in one State do not of themselves create equities in or encumbrances against real estate located in another State, but if appropriate proceedings are taken based upon such judgments or decrees, they are entitled to full faith and credit. The Nebraska Courts were asked not to give full faith and credit to the Washington decree, but rather to declare that, because of notice or knowledge of the decree, the grantee took subject to equities in favor of the wife, and therefore the conveyance should be set aside; and the Nebraska Courts decided the equities were not such that the conveyance should be set aside. As Mr. Justice Holmes reasoned in his concurring opinion, the error of the Nebraska Courts lay not in their failure to recognize and give full credit to the decree, but in their interpretation and application of principles of equity with which this Court was not concerned. In the case at bar there is no specific property involved, there is no conveyance to set aside, petitioner and the adverse claimant are both volunteers; and petitioner seeks a distributive share in the estate of decedent according to the shares prescribed by the Intestate Laws of Pennsylvania.

In *Olmsted v. Olmsted*, 216 U. S. 386; 54 Law. Ed. 530; 30 Supreme Court 292, a decedent, who died in New York in 1874, by will devised a one-half interest in certain real estate in New York to his son, with the remainder over to the "lawful issue" of the latter; the son, who had married in 1870 and who had children by this marriage, entered into a meretricious relationship with another woman, and in February 1874, without procuring a divorce, went through a marriage ceremony with her in New Jersey; in 1880 the son and his paramour moved to Michigan with their two children, and in 1882 after the son procured a divorce in that State, they married there, which made their two children legitimate under the Michigan statute;

the contest was between the children by the first marriage, and the children of the second wife who also claimed that they were "lawful issue"; the New York Statute relating to illegitimate children who became legitimized by the subsequent marriage of their parents contained this limitation, viz: "such children shall enjoy all the rights and privileges of legitimate children, provided. however, that vested interests or estates shall not be divested or affected by this act." It is submitted that the New York Courts recognized the acts, records and judicial proceedings of Michigan, with full credit thereto, including the statute by which the children were legitimized but refused to disturb interests already vested when the acts were passed. In fact, it might well be argued that the decedent, when he gave the remainder over to "lawful issue" meant what the simple words implied, and that neither the Statute of New York nor the Statute of Michigan had anything to do with the case; that the Courts of New York only construed the will and decided that it would defeat testator's intention to include among "lawful issue" children who were legitimized subsequent to the date of his will. Similarly Pennsylvania Courts have held that a bequest or trust for the benefit of "children" of a son or daughter does not include a child adopted subsequent to the date of the will: *Ashhurst's Est.*, 32 District & County Reports (Pa.) 547; *Corr's Est.*, 338 Pa. 337. This Court, in line with *Clarke vs. Clarke*, supra, held that the decision of the New York Courts controlled and governed the descent, alienation and transfer of the land situate in that State.

In *Hood v. McGehee*, 237 U. S. 611; 59 Law. Ed. 1144; children adopted by decedent in Louisiana laid claim to land of decedent situate in Alabama. According to the laws of Louisiana, they were entitled to share; but the Alabama Statute of Descents, as construed by the Courts of that State, excluded children adopted by proceedings in other states. This Court held that Alabama is the sole

mistress of the devolution of land by descent, and that the Courts of Alabama gave full credit to the adoption in Louisiana, recognizing the status but denying the right of inheritance by reason thereof. In the case at bar, petitioner does not claim to inherit under the laws of New Jersey, nor does she claim to inherit by virtue of a decree entered there; to the contrary, petitioner claims that she is a natural heir of the decedent and that her status of adoption does not preclude her from sharing in the estate because the very decree which is invoked against her contains a limitation in plain terms reserving the right of inheritance.

Conclusion.

This Court, in *Williams v. North Carolina,* supra, said that judgments (and decrees) obtained in one State are entitled to full faith and credit in a sister State; that the exceptions to this rule are few and far between; and that this Court has been reluctant to admit exceptions since the very purpose of Article IV, Section 1 of the Constitution was "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation", citing *Milwaukee County v. M. E. White Co.,* 296 U. S. 276, 277; 80 Law. Ed. 227, 228; 56 Supreme Court 229.

WHEREFORE your petitioner submits that, in this case there are special and important reasons which should move this Honorable Court in the exercise of sound judicial discretion to grant a review on writ of certiorari; and your petitioner prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of Pennsylvania, commanding that Court to certify and to send to this Court for review and determination, on a day certain to be therein named, a full and complete

transcript of the record and all proceedings therein; and that this Court reverse the judgment or decree of the Supreme Court of Pennsylvania and grant to petitioner such other and further relief in the premises as to this Court may seem meet and just.

Respectfully submitted,

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Mayer, Magaziner & Brunswick,
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by D. Arthur Magaziner

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FILED
MAR 12 1943
CHARLES ELMORE CROPLEY
CLERK

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OCTOBER TERM, 1942.

NO. 748

ESTATE OF GEORGE W. ZOELL, Deceased.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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NO. 748

ESTATE OF GEORGE W. ZOELL, Deceased.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Brief of the Respondents in opposition to granting a Writ of Certiorari is respectfully presented:—

I.

Statement of Matter Involved.

1. *Summary of facts.*

This is the personal estate of George W. Zoell, who died intestate and domiciled in the State of Pennsylvania. A natural grand-nephew and a natural grand-niece had been adopted under Pennsylvania Adoption Decrees and a natural niece, the appellant, had been adopted under a New Jersey Adoption Decree which contained an exception reserving the right of inheritance between her and her natural parents.

The Orphans' Court of Allegheny County, Pennsylvania held that the respective adoptions deprived each

of the adopted persons of the right to inherit and awarded the Estate to Edgar L. Kress, a natural grandnephew not affected by adoption. On appeal the Supreme Court of Pennsylvania affirmed the decree of distribution.

2. *"Questions presented" in Petition too broad.*

The inheritance reservation is distinctly not the general reservation incorporated into "Questions presented" (page 3 of Petition). The actual reservation only reserves inheritance from natural parents and this fact narrows the issue as to the effect of the reservation.

II.

No Reason for Granting Certiorari.

1. *The Narrow Issue.*

If Petitioner had not been adopted she would have inherited in Zoell's Estate only by right of representation of her deceased mother. The Inheritance Reservation in her Adoption Decree does not give her the right and the Intestate Act of Pennsylvania denies that right. This narrow issue was raised in the Orphans' Court of Allegheny County, Pennsylvania and in the Supreme Court of Pennsylvania but was not directly answered. If it had been decided as here stated, further consideration of the inheritance reservation would have been unnecessary. The Supreme Court of Pennsylvania in the foot-note to the Opinion (R. 7b) in effect held that it could have decided the case on the narrow issue but did not desire to do so. We quote said foot-note:—

> "While this might be held to preserve only her inheritance rights from her parents, we do not desire to dispose of the case on this narrow issue."

2. *Question decided by Supreme Court of Pennsylvania.*

The Supreme Court of Pennsylvania chose to base its decision on broad grounds and in the Opinion (R. 6b) 345 Pa. 413 propounded the question that it proposed to answer and did answer:—

> "What are the inheritance rights of a child, adopted in New Jersey, in the estate of a natural collateral relative, dying intestate, domiciled in Pennsylvania, whose entire estate is located here, where the New Jersey decree of adoption reserved certain inheritance rights to the adopted child?"

3. *The Pennsylvania Intestate Act prohibits certain inheritance.*

Distribution of Intestates' Estates in Pennsylvania is purely statutory and is governed by the Intestate Act of Pennsylvania of June 7, 1917, P. L. 429, as amended. All of Section 16 of said Intestate Act is devoted to inheritance by adopted persons but the part of the Section directly applicable to the case at hand is found in Section 16-B which states *inter alia*:—

> "Adopted persons shall not be entitled to inherit or take from or through their natural parents, grand-parents, or collateral relatives, but each adopted person shall have all his or her rights under this act in the estates of his or her spouse, children, and descendants."

It may be of interest to note that adopted persons can now inherit in Pennsylvania not only from adoptive parents, but also from collateral relatives of adoptive parents. *Cave's Estate,* 326 Pa. 358, 192 A 460.

4. *New Jersey Adoption Statute governs adoption decree.*

The applicable part of the New Jersey Statute of Adoption (C. S. p. 2808, § 15; N. J. S. A. 9:3-7) regulating the making of a Decree of Adoption by the Court specifically provides:—

> " * * it shall make a decree * * * declaring and adjudging that * * * the rights, duties, privileges and relations theretofore existing between the child and his parent or parents shall be in all respects at an end, excepting the right of inheritance * * *"

5. *New Jersey adoption decree inserts reservation required by adoption statute.*

The New Jersey Adoption Decree (R. 7 a) was made August 8, 1919, and contained the inheritance exception or reservation which the New Jersey Adoption Statute required. Said inheritance reservation is as follows:—

> "* * * the rights, duties, privileges and relations heretofore existing between the said Helen Campbell and her parents, lately deceased as aforesaid, shall be and are in all respects at an end, excepting the right of inheritance * * *"

6. *Authority of Inheritance Reservations.*

Inheritance reservations in foreign adoption decrees are of no greater authority than foreign statutory laws of inheritance to which they give effect.

An Adoption Decree is but the creature of Statute and can confer no greater rights than the Statute which created it. The Inheritance Reservation in the Adoption Decree was merely declaratory of the Inheritance law of New Jersey and applied only to Estates to be distributed

in New Jersey. Even that right was subject at all times to be increased, diminished or destroyed by amendment or repeal of the inheritance laws of New Jersey.

7. *Inheritance reservations may be far reaching and destructive.*

The rule of the Law of the Domicile of decedent as to personalty and of the situs as to real property prevails in Pennsylvania. Any departure from the rule either under the guise of state comity or the full faith and credit clause of the Constitution of the United States would lead to confusion and resultant evils.

Inheritance Reservations can be far reaching. Let us consider the possible case of a Pennsylvania testate who by his Last Will and Testament devised and bequeathed his estate, real and personal, to his wife, and was survived by her, by a son residing in Pennsylvania, unaffected by adoption, and by another son adopted under a New Jersey Adoption Decree containing the following inheritance reservation:—

> "Reserving to the adopted person the right to inherit from his natural relatives dying testate or intestate such share in their estates as he would take in case of their intestacy."

If this reservation were given effect, the Will would be set aside in part, the son in Pennsylvania would take nothing, but the son adopted in New Jersey would take to the deprivation of his widowed mother.

8. *General Principles.*

The Intestate Act of Pennsylvania provides a complete system of inheritance and distribution of the personal estates of all persons who die intestate and domiciled therein. It also provides a complete system

of inheritance and distribution in all intestacy as to real estate within its borders. It determines who shall and who shall not inherit as well as the share of inheritance.

The States generally, including Pennsylvania, write their Intestate Laws in general terms so as to provide a complete system of distribution. Those laws apply to all heirs regardless of where residing, to surviving spouses regardless of where married, and to adopted persons regardless of where adopted. If any limitation were intended, that limitation would be incorporated into the Intestate Laws by express words.

Under the Full Faith and Credit Clause of the Constitution of the United States, Pennsylvania must recognize the status of adoptions created by foreign Adoption Decrees, but it is not prohibited from giving full faith and credit to its own Statutes of Inheritance. Pennsylvania gives to persons adopted in foreign States the same rights of inheritance that it gives to persons adopted in the State of Pennsylvania.

9. *Rule as stated in Reference Authorities as to right of persons adopted in foreign States to inherit in domicile of decedent.*

The rule that persons adopted in foreign States cannot inherit in the State of the domicile of the decedent if persons adopted in the State of the domicile cannot inherit, is differently stated in various reference authorities:

The Re-statement, Conflict of Laws, Sect. 143 at page 209, Foreign Adoptions, thus states the rule:—

> "The status of adoption, created by the law of a state having jurisdiction to create it, will be given the same effect in another state as is given by the latter state to the status of adoption when created by its own law."

and further states the rule in Sect. 305 b and Sect. 305 c at page 387:—

> Sect. 305 b:—"If the law of the state of the decedent's domicil allows an adopted child to take a distributive share, a legally adopted child will take a share although the law of the state of adoption or of the state where a chattel is provides otherwise. If the law of the state of the decedent's domicil does not allow an adopted child to take a distributive share, he cannot do so, although the law of the state of adoption or of the state where a chattel is would allow him to take."
>
> Sect. 305 c:—"The law of the State of the decedent's domicil determines whether an adopted child can take a distributive share from or through or transmit it to or through a collateral relation."

The rule is thus stated in 2 *Corpus Juris Secundum,* Sect. 66 at page 459:—

> "Accordingly the child's right of inheritance in the state of succession is not affected by the fact that the statute under which he was adopted gave him a less extensive right, and conversely his rights are not enlarged by the fact that the statute under which he was adopted gave him a greater right than the one in which the succession takes place."

Corpus Juris, Adoption of Children, Sect. 138, Foreign Adoption states the rule:—

> "It is generally held that the status created by an adoption in one State will be recognized by the Courts in another State, to such extent at least as is not inconsistent with the laws and policy of the latter. This general rule is subject, however, to the qualification that the Courts of a particular State will not permit a statute of a foreign State to extend any further than the local statute upon the same subject, nor to confer any greater rights."

10. *Decisions of other States.*

The rule prevails generally among the States, under various wordings, that persons adopted in other States can have no greater rights in the State of inheritance than persons adopted therein.

In *Anderson v. French,* 77 N. H. 509, the Supreme Court of New Hampshire at page 511 stated, "The question for decision, therefore, is whether the capacity of an appellant to inherit as an adopted child, is governed and limited by the law of Massachusetts, where she was adopted, or by the laws of this State, where the one from whom she seeks to inherit personal property had her domicile at the time of death. The legality of the adoption is decided by the law of the State where the adoption took place; but that relation or status having been established, what the adopted child should inherit, should be determined in the case of personalty by the *lex domicilli* of the owner at the time of his decease, and the real estate by the *lex rei sitae* * * * "; and at page 514 stated, "Whatever may be said as to the status of marriage and adoption, the rights of inheritance as to both relations are governed largely by statute in this country; and no logical reason has been advanced, and none occurs to us, why the rights of a married woman in her husband's personalty should be determined in accordance with the laws of his last domicile, and the rights of an adopted child in relation to personalty, by the laws where the adoption occurred * * * "; and further at page 514 stated, "The rights of inheritance in property do not accrue until the death of the owner; the rights of an adopted child cannot be fixed and determined when the adoption takes place, for such rights may be changed, modified or repealed by the Legislature of the State. They are separate and distinct from the Act of Adoption." The Court gave recognition to the validity of the Massachusetts adop-

tion but distributed the estate under the Intestate Laws of New Hampshire, which latter State was the decedent's domicile.

In the case of *Keegan v. Geraghaty,* 101 Ill. 26, a person adopted by Adoption Decree in Wisconsin, was entitled to inherit real estate in Wisconsin by representation from collateral kindred of the adopting parent, but an adopted person could not so inherit in Illinois where the real estate was located. The Supreme Court of the State of Illinois held that the laws of the State of Illinois must control the right to inherit and in the Opinion at page 34 said: " * * * the rights of inheritance acquired by the adopted child under the laws of Wisconsin, will be recognized and upheld in this State only so far as they may not be inconsistent with our law of descent, so that if by our own statute of adoption, the petitioner could not take in this case under the statute of descent, then she cannot take, no matter what may be the law of Wisconsin, in respect to the rights of an adopted child."

Slattery v. Hartford-Connecticut Trust Company; 115 Conn. 163, 161 Atl. 79, is an exception to the general rule prevailing in the States that Inheritance Laws and Inheritance Decrees of one State will not be permitted to affect inheritance in another State, but that decision cannot alter the positive rule that each State has the right to control inheritance within its own borders, which latter right has been frequently approved in Decisions of the Supreme Court of the United States.

11. *Decisions of Pennsylvania Courts.*

The High Courts of Pennsylvania hold that inheritance in Pennsylvania is governed by the Inheritance Laws of Pennsylvania and that they will not be subordinated to foreign inheritance laws or foreign decrees

of inheritance. The applicable decisions, Zoell's Estate (R. 6b) 345 Pa. 413; Crossley's Estate 135 Pa. Super. Court 524, 7 A. 2d 539, 73 A.L.R. 974; Burnett's Estate 219 Pa. 599, 69 A. 74 (1908), are based on the settled Rule of inheritance that the law of the domicile of a decedent governs the inheritance of his personal estate and the law of the *situs* governs the inheritance of his real property. In accordance with that Rule each State has the right to govern inheritance within its own borders and no State has the right by Statute or Decree to impose its inheritance laws on another State. The Court in each of said Estates gave full faith and credit to the status of the foreign adoptions but held that the rights of the adopted persons to inherit must be determined by the Inheritance Laws of Pennsylvania.

The Supreme Court of Pennsylvania, as well as the Orphans' Court of Allegheny County, gave full faith and credit in Zoell's Estate to *all* of the New Jersey Adoption Decree. It recognized and gave full effect to the status of the adoption and it recognized the inheritance reservation as applicable and incident to inheritance in the State of New Jersey.

The Orphans' Court of Allegheny County, in the Opinion (R. 8a) held that the Intestate Act of Pennsylvania, with but one exception which is irrelevant here, deprives adopted persons of the right of inheritance from their natural relatives; that the full faith and credit clause of the Constitution of the United States cannot be invoked in favor of inheritance rights reserved by decree of Court in the State of adoption where such rights are denied by statute in the State of decedent's domicile; that the Courts of Pennsylvania must recognize the status created by the adoption decree of the New Jersey Court but will accord only the inheritance rights given adopted persons by the Statutes of Pennsylvania; that the Intestate Law of Pennsyl-

vania cannot be subordinated to any decree of Court of another State and that the Decree of Distribution would be under the Pennsylvania Statute which would eliminate adopted persons.

The Supreme Court of Pennsylvania in the Opinion (R. 6 b) 345 Pa. 413 propounded the question to be answered thus: "What are the inheritance rights of a child, adopted in New Jersey, in the estate of a natural collateral relative, dying intestate, domiciled in Pennsylvania, whose entire estate is located here, where the New Jersey decree of adoption reserved certain inheritance rights to the adopted child?"

The Supreme Court of Pennsylvania held that the answer was to be found in the Intestate Act of Pennsylvania; that the applicable part of the Intestate Act says that adopted persons shall not be entitled to inherit from their natural collateral relatives and that there are no exceptions to that plain mandate; that the Court recognized the status of appellant's adoption but that like all other adopted persons she cannot take anything from a natural collateral relative; that a New Jersey Decree or a Statute of that State to which the decree gives effect cannot alter the positive law of Pennsylvania. The Supreme Court of Pennsylvania quoted with approval from 73 A.L.R. 974 as follows:—"The state of the place of the property, in denying him the right to inherit, is not denying his status as an adopted child, nor even the incident of that status (for rights of inheritance as to property located in the state of adoption are still recognized), but is merely giving effect to its statute of inheritance prescribing the class of persons who shall or shall not take property there located." The Court quoted with approval The Re-statement, Conflict of Laws, Sec. 305 b, Crossley's Estate 135 Pa. Superior Ct. 524 and Burnett's Estate 219 Pa. 599, 69 A. 74.

Burnett's Estate 219 Pa. 599, 69 A. 74 involved the Estate of a Pennsylvania intestate who died survived by the adopted son of a deceased brother, the adoption having occurred under the Laws of the State of Ohio. The Court held that the Ohio adoption would be recognized but that the adoptive nephew could inherit in Pennsylvania only under the Pennsylvania Law of Inheritance, that since a person adopted in Pennsylvania could not at that time inherit from the relatives of adopting parents, it followed that a person adopted in Ohio could not inherit. (It is to be noted that under the present Pennsylvania Intestate Act adopted persons now inherit from collateral relatives of adoptive parents, Cave's Estate 326 Pa. 358, 192 A 460.)

It may be proper to refer here to a lower Court case cited by Petitioner and to point out the fallacy of the reasoning and its lack of authority. In Hall's Estate, Orphans' Court of Philadelphia County, Pennsylvania, 20 D & C 214 (1934) cited in Petition (Page 7 of Petition), a child adopted under a New Jersey Decree of Adoption, which reserved the right of inheritance from his natural parents, was held entitled to share in the estate of his natural father who died intestate and domiciled in Pennsylvania. The theory advanced by the Court, that the decedent by permitting the adoption contracted for his son's right to inherit from him, is fanciful. The New Jersey Adoption Statute requires all New Jersey adoption decrees to include the same inheritance reservation. The mandate of that Statute, together with the recital in the New Jersey Adoption decree in Zoell's Estate that the natural parents were dead, fully explodes the inheritance contract theory.

A distinction exists between Hall's Estate and Zoell's Estate in that Hall's Estate involved inheritance from a natural parent and thereby came within the wording of the inheritance reservation, while Zoell's

Estate involves inheritance from a natural uncle and therefore does not come within the wording of the inheritance reservation.

The reasoning in Hall's Estate was urged upon the Orphans' Court of Allegheny County and the Superior Court of Pennsylvania in Crossley's Estate, and upon the Orphans' Court of Allegheny County, and the Supreme Court of Pennsylvania in Zoell's Estate but was flatly rejected. It is true that the Superior Court of Pennsylvania pointed out that unlike Hall's Estate the Adoption Decree in Crossley's Estate did not contain an Inheritance Reservation but that on the other hand under the Laws of the State of Ohio a legally adopted child may inherit from natural parents or other kin. The right of any foreign law or decree to control inheritance in Pennsylvania was certainly unequivocally and convincingly denied in the exhaustive and sweeping Opinion in Crossley's Estate.

In Crossley's Estate, 135 Pa. Super. Court 524, 73 A. L. R. 974 (1939) two natural grand-children claimed the right to inherit from Irene Crossley, their natural grandmother, who had died intestate and domiciled in Pennsylvania. Their mother was the natural daughter of the decedent, but had been adopted under an Adoption Decree in the State of Ohio. Distribution was awarded by the Orphans' Court of Allegheny County to a sister of decedent and to the children of a deceased sister to the exclusion of said grand-children. The grand-children petitioned for a review of the Decree of Distribution and appealed to the Superior Court of Pennsylvania from the Order dismissing the Petition.

The Superior Court of Pennsylvania reviewed the authorities relating to Descent and Distribution and to the Conflict of Laws, and the conclusions contained in its learned Opinion may be summarized as follows:—

1. In Ohio a legally adopted child can inherit from natural relatives.
2. The common law Rule of the law of the domicile, that personal property has no *situs* but follows the person of the owner and is distributed according to the laws of the owner's domicile, has been universal for so long a time that it is part of the *jus gentium.*
3. The Law of the State of the adoption creates the status of adoption but the law of decedent's domicile controls inheritance as to personalty.
4. Section 16 (b) of the Intestate Act of Pennsylvania applies to adopted persons wherever adopted and to persons claiming through them. To hold otherwise would create a power in another State to limit and to nullify the authority of the State of Pennsylvania to determine for itself how property should descend on intestacy.
5. Distribution of the estate of Irene Crossley is governed by the Intestate Act of Pennsylvania and the natural grand-children by reason of their mother's adoption cannot share in the estate.

In the Opinion in Crossley's Estate, the Superior Court said: "The right to transmit or to receive property by will or through intestacy is not a natural right, but a creature of statutory grant: Tack's Est., 325 Pa. 545, 191 A. 155; Carroll's Est., 219 Pa. 440, 68 A. 1038. The act of adoption creates but a status, viz: that of parent and child, and it is a general rule that the validity of the adoption is governed by the laws of the state which created it, and the adoption decree of the court of another state under the Federal Constitution is entitled to full faith and credit: 1 Am. Jur. 627, Sec. 10. Appellants' status as adopted children, therefore must

be recognized, but only with the rights incident to that status under the laws of Pennsylvania. The intent of Section 16 (b) of the Intestate Act, *supra,* is that it shall apply to adopted persons generally, whether the persons were adopted under the laws of the State of Pennsylvania or elsewhere. To hold otherwise would create a power in another state to limit and nullify the authority of this state to determine for itself how property shall descend on intestacy."

"The property for distribution in this estate was personalty, and the common law rule is that personal property has no *situs* but follows the person of the owner and is distributed according to the intestate laws of the owner's domicile. "This rule has been universal for so long a time that it may now be said to be part of the *jus gentium.*" And the laws of other states have no bearing except as that state expressly or tacitly adopts them. 11 Am. Jur. 368, Sec. 82; 18 C. J. 810; 12 C. J. 476. "This is a question of descent, and not one of status, and as such will be governed by the *lex rei sitae* or *lex domicilii decedentis.*. This does not seem to be inconsistent with the rule that the status acquired by adoption in a state, together with its incidents, will be recognized in another state; for the state of the place of the property, in denying him the right to inherit, is not denying his status as an adopted child, nor even the incident of that status (for rights of inheritance as to property located in the state of adoption are still recognized), but is merely giving effect to its statute of inheritance prescribing the class of person who shall or shall not take property there located. This view seems to be eminently sound." 73 A.L.R. 973.

Crossley's Estate is followed by Fisher's Estate, Orphans' Court of Montgomery County, Pennsylvania, 58 Montgomery County Law Reporter 134, Holland, P. J., January 30, 1942.

Fisher's Estate is that of a Pennsylvania intestate whose natural grand-children had been adopted in Iowa. Children may inherit from their natural as well as their adoptive parents and grand-parents, under the Inheritance Laws of Iowa. The Orphans' Court of Montgomery County applied the Intestate Laws of Pennsylvania and held that by reason of their adoptions the natural grand-children could not inherit in Pennsylvania from the estate of a natural grand-parent.

12. *Decisions of the Supreme Court of the United States.*

The Decisions of the Supreme Court of the United States have always upheld the Rule of the law of the domicile of decedents as to personalty and of the *situs* as to real property and the right of each State to control inheritance within the State.

In *Clarke v. Clarke* 178 U. S. 186, 190 the following facts were *inter alia* involved:—

The Will of Julia Clarke was probated in the State of South Carolina, the place of her domicile at the time of her death. The Supreme Court of South Carolina interpreted said Will and made a Declaratory Decree and adjudged that the Will worked a conversion of all her real estate of whatever description and wheresoever located into personalty. Part of the real estate was located in the State of Connecticut. The surviving husband of Julia Clarke claimed that under the Decree of the Supreme Court of South Carolina the Will worked a conversion of real estate everywhere and the Decree must be given full faith and credit in Connecticut. The Supreme Court of Connecticut held that the real estate in Connecticut was not converted into personalty notwithstanding the Decree of the Supreme Court of South Carolina and that her real estate in Connecticut was

controlled by the law of Connecticut. The Supreme Court of the United States in sustaining the Decision of the Supreme Court of Connecticut at Page 190 said:—

> "It is a doctrine firmly established that the law of a State in which land is situated controls and governs its transmission by Will or its passage in case of intestacy."

In *Olmsted v. Olmsted* 216 U. S. 386, 393, 395, the full faith and credit clause of the Constitution of the United States was considered insofar as it involved the recognition of the Statute of another State. The Supreme Court of the United States cited with approval the above quotation from *Clarke v. Clarke* and further at Page 395 said:—

> "We think there is nothing in the due (full) faith and credit clause which requires the courts of New York to give the effect contended for to the Michigan statute. The legislature of Michigan had no power to pass an act which would effect the transmission of title to lands located in the State of New York," and further said:—
>
> "We hold that there is nothing in the Federal Constitution requiring the courts of the State of New York to give force and effect to the statute of the State of Michigan so as to control the devolution of title to lands in New York," and further said:—
>
> "We are not concerned with the correctness of the decision of the Court of Appeals of New York interpreting its statutes and applying the law of its jurisdiction to the construction of the will of Silas Olmstead, we hold that there is nothing in the Federal Constitution requiring the Courts of the State of New York to give force and effect to the Statute of the State of Michigan so as to control the devolution of title to lands in New York."

In *Hood v. McGehee,* 237 U. S. 611, 615, a child adopted by decedent in Louisiana claimed the right to inherit land of the decedent which was located in the State of Alabama. Under the Laws of Louisiana adopted children were allowed to inherit, while under the Decisions of the Courts of Alabama children adopted in foreign States were prohibited from inheriting. The Supreme Court of the United States held:—

> "There is no failure to give full credit to the adoption of the plaintiffs, in a provision denying them the right to inherit land in another State. Alabama is sole mistress of the devolution of Alabama land by descent. Olmsted v. Olmsted, 216 U. S. 386."

In *Williams v. N. Carolina,* 87 Supreme Court Law. Ed. 190 (cited at Page 9 of Petition) which involved two Divorce Decrees of a Court of the State of Nevada, the Supreme Court of the United States held that divorces granted in one state must be given full faith and credit in all other states.

The Nevada Decrees of Divorce gave to the libellants the status of single persons and they thereupon intermarried within the State of Nevada. The legality of that marriage depended upon the legality of both divorces. The case is cited as supporting the claim of the Petitioner, but it does not do so. Under the general application of the principles involved in its Decision, the status of marriage, divorce or adoption created in one State must be given recognition in every State. The High Courts of Pennsylvania have always held that the status of adoption created in other States is to be recognized in Pennsylvania, and that no preference is to be given to any adoption because of the place of adoption; and they have always given all adopted persons the same

inheritance rights in Pennsylvania that are possessed by persons adopted in Pennsylvania.

III.

Conclusion.

A grand-nephew, adopted in Pennsylvania, a grand-niece, adopted in Pennsylvania, and a niece, the Petitioner, adopted in New Jersey, were alike excluded in the Orphans' Court Decree of Distribution from inheriting from their natural uncle, for the reason that no adopted person can inherit under the Pennsylvania Intestate Act from a natural collateral relative. On appeal, the Supreme Court of Pennsylvania, in affirming the Decree of Distribution, held that the authority and the mandate of the Pennsylvania Intestate Act were controlling.

The recent Decision of the Supreme Court of the United States in *Williams v. North Carolina, Supra,* is not opposed to but is in complete harmony with the rule, that each State controls inheritance within its own borders and determines the right to inherit and the share of inheritance of all persons regardless of the place of their birth, domicile, marriage, divorce or adoption.

It has been pointed out in this Brief that Inheritance Reservations may be far-reaching and destructive, that the so-called Inheritance Reservation is not an adjudication based on Findings of Fact by the New Jersey Court but is only an exception to rights taken away, and is required by the governing Statute to be inserted into the Adoption Decree, that an Adoption Decree cannot create inheritance rights, and that the only adjudication in an adoption decree is of the facts relating to the advisability of the adoption. It has been pointed out that the Exception of inheritance rights is only that of inheritance rights between the Petitioner and her nat-

ural parents and is not so broad as the reservation embodied in the "Questions Presented" in the Petition, and creates a narrow issue not directly answered.

It has also been shown that the Decision of the Supreme Court of Pennsylvania is in accord with all Decisions of the High Courts of Pennsylvania, that it is in accord with the Decisions generally prevailing among the States, that it is in accord with the highest Reference Authorities, and what is more important, that it is in accord with the Decisions of the Supreme Court of the United States, which have always upheld the Rule of the Law of the Domicile of decedents as to personalty and of the *situs* as to real property and the right thereunder of each State to control inheritance within the State.

The Supreme Court of Pennsylvania gave recognition to the incident of inheritance as applicable to inheritance in the State of New Jersey and it gave full effect to the status of the adoption and accorded to Petitioner all inheritance rights that are given to persons adopted in Pennsylvania. The Decision of the Supreme Court of Pennsylvania is in accord with all applicable Decisions of the Supreme Court of the United States and no new question is presented. It is, therefore, respectfully submitted that the Petition for a Writ of *Certiorari* should be denied.

Respectfully submitted,

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Encl